

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

FILED

FEB 15 2018

Clerk, U.S. District Court
District Of Montana
Helena

In the Matter of Genet McCann,
An Attorney-at-Law,
Respondent.

No. CV 18-02-H-SEH

In the Matter of Genet McCann,
An Attorney-at-Law,
Respondent.

No. CV 18-03-H-SEH

ORDER

1. On January 10, 2018, Respondent, Genet McCann ("McCann")
filed in this Court:

a. Cause No. CV 18-02-H-SEH, Notice of Civil Rights Removal
from the Commission on Practice of the Supreme Court of the State of
Montana No. PR 17-0670; ODC 17-110 Pursuant to 28 U.S.C. § 1443(1);¹
and

b. Cause No. CV 18-03-H-SEH, Notice of Civil Rights
Removal from the Commission on Practice of the Supreme Court of the

¹ No. CV 18-02-H-SEH, Doc. 1.

State of Montana No. PR 16-0635; ODC 15-078 Pursuant to 28 U.S.C. § 1443(1).²

2. On January 10, 2018, service of process of McCann's notice filed in Cause No. CV 18-02-H-SEH was made upon:

- a. Jon G. Moog, Office of Disciplinary Counsel for the State of Montana ("ODC");
- b. Shelly Smith, Commission on Practice of the Supreme Court of Montana ("COP");
- c. Michael W. Cotter, ODC; and
- d. Ward Taleff, COP.³

3. On January 10, 2018, service of process of McCann's notice filed in Cause No. CV 18-03-H-SEH was made upon:

- a. Tracy A. Axelberg, COP;
- b. Michael W. Cotter, ODC; and
- c. Shelly Smith, COP.⁴

4. On January 10, 2018, ODC filed a Motion for Remand in Cause No.

² No. CV 18-03-H-SEH, Doc. 1.

³ No. CV 18-02-H-SEH, Doc. 1 at 27.

⁴ No. CV 18-03-H-SEH, Doc. 1 at 34.

CV 18-02-H-SEH⁵ and a Brief in Support of Motion for Remand.⁶

5. On January 10, 2018, ODC filed a Motion for Remand in Cause No. CV 18-03-H-SEH⁷ and a Brief in Support of Motion for Remand.⁸

6. On January 11, 2018, this Court issued Orders dismissing both actions, cause numbers CV 18-02-H-SEH and CV 18-03-H-SEH, stating, *inter alia*, that disciplinary proceedings “are beyond and outside the jurisdiction of this Court” and “are not subject to removal to federal court.”⁹ The January 11, 2018, Orders further stated “[t]he Court will set a hearing on the Office of Disciplinary Counsel for the State of Montana’s request for attorney fees and costs by separate order.”¹⁰

7. Filings made after January 11, 2018, and presently before the Court are:

⁵ No. CV 18-02-H-SEH, Doc. 4. ODC’s Motions for Remand requests “[a]n order requiring McCann to pay just costs and actual expenses, including attorney fees, incurred by the ODC as a result of the removal under 28 U.S.C. § 1447(d).” Doc. 4 at 2.

⁶ No. CV 18-02-H-SEH, Doc. 5.

⁷ No. CV 18-03-H-SEH, Doc. 3. ODC’s Motions for Remand included a request for “[a]n order requiring McCann to pay just costs and actual expenses, including attorney fees, incurred by the ODC as a result of the removal under 28 U.S.C. § 1447(d).” Doc. 3 at 2.

⁸ No. CV 18-03-H-SEH, Doc. 4.

⁹ No. CV 18-02-H-SEH, Doc. 9 at 3; No. CV 18-03-H-SEH, Doc. 8 at 3.

¹⁰ No. CV 18-02-H-SEH, Doc. 9 at 4; No. CV 18-03-H-SEH, Doc. 8 at 4.

- a. McCann's Answer to ODC's Formal Complaint;¹¹
- b. ODC's Requests for Assessment of Fees and Costs;¹²
- c. ODC's Motion to Strike Answer;¹³
- d. McCann's Motion for Retroactive Recusal as Required by 28 U.S.C. §§ 445(a)-(b)(1) + Motion to Amend or Alter Judgment Pursuant to Rule 59(e) + Motion for Relief from Judgment pursuant to Rule 60(b) + Review under 28 U.S.C. § 1447(d);¹⁴ and
- e. ODC's Motion to Strike McCann's Motions for Recusal, to Amend or Alter Judgment, Relief from Judgment, Entry of Findings of Fact and Conclusions of Law, and Vacatur of Remand.¹⁵

8. Notwithstanding that address and resolution of issues relevant to ODC's requests for attorney fees and costs were reserved, the Court, upon further consideration, has concluded that a substantial question exists as to whether the Court, following dismissal of both causes, retained jurisdiction to exercise

¹¹ No. CV 18-02-H-SEH, Doc. 11.

¹² No. CV 18-02-H-SEH, Doc. 12; No. CV 18-03-H-SEH, Doc. 10.

¹³ No. CV 18-02-H-SEH, Doc. 13. ODC's Brief in Support of this motion includes a request for "an award of just costs, including actual costs and attorney fees." Doc. 14 at 3.

¹⁴ No. CV 18-03-H-SEH, Doc. 11.

¹⁵ No. CV 18-03-H-SEH, Doc. 13. ODC's Brief in Support of this motion includes a request for "an award of just costs, including actual costs and attorney fees." Doc. 14 at 3.

discretion to award attorney fees and costs.

ORDERED:

1. ODC's Motion to Strike Answer;¹⁶ McCann's Motion for Retroactive Recusal as Required by 28 U.S.C. §§ 445(a)-(b)(1) + Motion to Amend or Alter Judgment Pursuant to Rule 59(e) + Motion for Relief from Judgment pursuant to Rule 60(b) + Review under 28 U.S.C. § 1447(d);¹⁷ and ODC's Motion to Strike McCann's Motions for Recusal, to Amend or Alter Judgment, Relief from Judgment, Entry of Findings of Fact and Conclusions of Law, and Vacatur of Remand¹⁸ are DENIED AS MOOT. The Court is without jurisdiction to address or proceed with resolution of any of them.¹⁹

2. The Court will not exercise its discretion, if available, to award attorney fees and costs to ODC. All requests for attorney fees and costs by ODC are DENIED.

¹⁶ No. CV 18-02-H-SEH, Doc. 13.

¹⁷ No. CV 18-03-H-SEH, Doc. 11.


¹⁸ No. CV 18-03-H-SEH, Doc. 13.

¹⁹ See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998); see also *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 560-61 (2017); see also *Ruiz v. Snowhomish Cty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1166 (9th Cir. 2016).

3. Cause number CV 18-02-H-SEH and Cause number CV 18-03-H-SEH were dismissed by this Court by Orders of January 11, 2018.²⁰ The dismissals stand. The Court is without jurisdiction to proceed further.²¹

4. The clerk is directed to enter judgments of dismissal and close the cases.

DATED this 15th of February, 2018.


SAM E. HADDON
United States District Judge

²⁰ No. CV 18-02-H-SEH, Doc. 9 at 3; No. CV 18-03-H-SEH, Doc. 8 at 3.

²¹ See *Steel Co.*, 523 U.S. at 94; see also *Lightfoot*, 137 S. Ct. at 560-61; see also *Ruiz*, 824 F.3d at 1166.